

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
ALTAGRACIA PEGUERO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AMERICAN EXPRESS COMPANY,	)	
THE SKLOVER GROUP, INC. and	)	
FEDERAL INSURANCE COMPANY,	)	
	)	Civil Action No. 05-10995-RCL
Defendants.	)	
	)	
AMERICAN EXPRESS COMPANY,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
HEALTHEXTRAS, LLC,	)	
	)	
Third-Party Defendant.	)	
_____	)	

MOTION OF THIRD-PARTY DEFENDANT HEALTHEXTRAS, LLC  
TO DISMISS THIRD-PARTY COMPLAINT OF AMERICAN EXPRESS COMPANY  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, third-party defendant HealthExtras, LLC (“HealthExtras”) respectfully moves to dismiss the third-party complaint of American Express Company (“Amex”) for failure to state a claim upon which relief can be granted against HealthExtras. As grounds for this motion, HealthExtras states that the contract that defines the relationship between Amex and HealthExtras, and that is the basis of Amex’s third-party complaint, includes a detailed, mandatory alternative dispute resolution process that Amex failed to follow before resorting to litigation against HealthExtras. Under applicable New

York law, such contract provisions are fully enforceable, and stand as a condition precedent to one party's right to sue the other. The grounds for this motion are set forth more fully in HealthExtras' accompanying memorandum of law.

HEALTHEXTRAS, LLC

By its attorney,

/s/ Donald R. Pinto, Jr.  
Donald R. Pinto, Jr., BBO No. 548421  
RACKEMANN, SAWYER & BREWSTER  
One Financial Center  
Boston, Massachusetts 02111  
(617) 542-2300

CERTIFICATE UNDER LOCAL RULE 7.1(A)(2)

I hereby certify that I have attempted, by e-mail and telephone, to confer with counsel for third-party plaintiff American Express Company ("Amex") in good faith in an attempt to resolve or narrow the issues presented by this motion. I have been unable to reach either of Amex's counsel of record as of this date, which is the due date for my client's response to Amex's third-party complaint.

/s/ Donald R. Pinto, Jr.  
Donald R. Pinto, Jr.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Donald R. Pinto, Jr.

Donald R. Pinto, Jr.

Dated: April 17, 2006